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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,027	08/26/2003	Larry B. McAllister JR.	D-43656-01	3484

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Cryovac, Inc.  
P. O. Box 464  
Duncan, SC 29334

EXAMINER
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AHMED, SHEEBA

ART UNIT	PAPER NUMBER
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1773

MAIL DATE	DELIVERY MODE
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09/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/648,027

Applicant(s)

MCALLISTER ET AL.

Examiner

Sheeba Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7,8,10-15,17-22,26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7,8,10-15,17-22,26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/13/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. Amendments to claims 7 and 14 have been entered in the above-identified application. Claims 1-6, 9, 16, and 23-25 are cancelled. Claims 26 and 27 are new.

**Claims 7, 8, 10-15, 17-22, 26, and 27 are now pending.**

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7, 8, 10-15, 17-22, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schoenberg (4,514,465) in view of Longmoore et al (6,497,965) and Plume (6,846,863) and applicant's admissions.

The Specification of the instant application states that "amide waxes have been used for many years as slip agents in the production of films. Chemically, the waxes are primary, secondary, tertiary, or bis fatty amides, such as oleamide and erucamide." (page 1, lines 29-30). It is well known in the art that fatty acid amide materials migrate and that they are conventionally used in the art as slip agents. The applicants freely admit the materials migrate and bloom to the surface (page 1, lines 37+) to give the polymeric films slip properties. Producers of films also operate on a second principle

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that packaging applications typically require a film with a low coefficient of friction (COF). This requirement is dictated by the need for the film to run properly on packaging equipment used by food producers and other packagers (page 2, lines 5+). However, there are problems if “ a significant amount of wax migrates to the surface” (page 2, lines 28+).

On the other hand, Schoenberg teaches five-layer polyethylene films having antiblocking particles on the surface layers and comprise amide slip agents. However, he is silent regarding the use of slip agents in the intermediate layers in a higher amount than the surface layers and Plume et al. teach that all sorts of lubricants can be use in polyethylene materials (column 2) including fatty acid amide. Additionally materials such as calcium searate can be added as an anti acid component. All of these are considered to be conventional additives (column 2, lines 27+). Furthermore, Longmoore et al. also teach using fatty acid amides in the core layer of films. They state that “slip agent is frequently incorporated into the core layer of composite films, which are then heat treated to force it to migrate to the surface layers” (column 4, lines 37+).

It would have been obvious to one having ordinary skill in the art to have used higher levels of sterates and fatty acid amides in the intermediate layers of the films taught by Schoenberg in order to control the bloom of the slip agents to the surface of the films. It also would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the claimed additive combinations as each of the materials used by the applicant are conventional additives used in the production of plastic films. The use of the materials would improve the lubrication of the films and

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function as anti acid materials. The specific amount of fatty acid on the surface is a result effective variable. There must be sufficient material to give desired slip properties but not so much that it interferes with the machinery or sealing properties.

While the applicants state that they have unexpected result for the claimed combination of materials, there is nothing on the record to show that this is the case. There is only one comparative example, and it provides no showing on this aspect of the invention. It is the examiner's position that applicants are using conventional additives. The applicants may have unexpected results for the combination of materials, but a strong showing would be needed to overcome the rejection. The applicants' showing is not commensurate in scope with the breath of their current claims. The applicants amended the claims to state that all the layers comprise primary fatty amidic acid and that outer layers comprise a fraction of the amount of material present in one of the first and second substrate layers. As discussed above, Longmoore et al. teach that the fatty acid materials may be added to interior layers. The current claimed invention would be arrived at in those instances where the fatty acid materials were added to the layers interior to the surface layers and then allowed to migrate (bloom). The concentration gradient would naturally follow the claimed values (15% - 50% of the amount in the substrate layers) as the material would migrate from a high concentration in the originating layer toward the surface. Additionally, the specific amount (10 to 15 g/square inch) is directly related to how the film functions and the slip properties realized.

***Response to Arguments***

3. Applicant's arguments filed on June 11, 2007 have been fully considered but they are not persuasive. Applicants traverse the rejection of claims Claims 7, 8, 10-15, 17-22, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schoenberg (4,514,465) in view of Longmoore et al (6,497,965) and Plume (6,846,863) and applicant's admissions. Applicants have provided an explanation of the experimental data in the Specification and assert that the result (see Table 7) was that the first and second outer layers of the film of Example 24 each had an outside surface total amide coating of 14.3 micrograms/inch<sup>2</sup>, compared with only 10.9 micrograms/inch<sup>2</sup> for Example 23. The higher amide surface coating is beneficial in providing a polymeric film that exhibits adequate film surface properties characterized by a low coefficient of friction (COF) and high slip and that these properties are dictated by the need for the film to run properly on packaging equipment used by food processors and other packagers, for example, on Vertical Form Fill Seal (VFFS) equipment. However, it is unclear to the Examiner whether the above-described properties are unexpected and how they extend over the claimed range. The applicants' showing is not commensurate in scope with the breath of their current claims.

Applicants further submit that none of the references shows the combination of transition metal salt of stearic acid, or ester of stearic acid with primary fatty amidic wax in a multilayer film and that none of the references teaches the use of transition metal salt of stearic acid, or ester of stearic acid to enhance the migration of amidic waxes. However, the Examiner finds the above arguments unpersuasive. First, the limitation

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that the use of transition metal salt of stearic acid, or ester of stearic acid to enhance the migration of amidic waxes is not in the claims and second, the Examiner would like to point out that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The claimed arrangement is suggested by the prior art and the applicants admit that fatty acid amides are typically used a slip agent and that they migrate. The prior art also recognizes that the materials may be placed in the interior of films and while the applicants have amended the claims to recite more specific concentrations of slip agents, it is the Examiner's position that this is clearly a result effective variable, and the gradient claimed would flow from the suggestions in the prior and the recognized migratory behavior of the additives.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

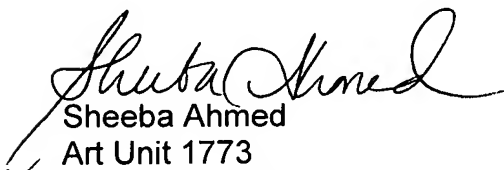
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (571)272-1504. The examiner can normally be reached on Monday-Friday from 9am to 2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

  
Sheeba Ahmed  
Art Unit 1773  
August 28, 2007